

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE:)	
)	
THE NINETEENTH STREET)	
INVESTMENTS, INC.)	CASE NO.: 11-04549-TBB7
)	Chapter: 7
DEBTOR)	

MOTION FOR INSTRUCTIONS AND CLARIFICATION

COMES NOW Creditor, Sharon Robertson, individually and as personal representative of the estate of Timothy Andrew Robertson, and files this motion for instructions and clarification of the Court's October 27, 2011, Order granting relief from stay in the above-entitled Chapter 7 proceedings. As grounds, Movant shows as follows:

1. On or about September 16, 2011, Movant filed a "Motion for Relief from Automatic Stay" in this proceeding regarding Debtor The Nineteenth Street Investments, Inc. ("Nineteenth Street"). Movant's motion is attached hereto as Exhibit "A". The Motion sought leave to proceed in a State Court dram shop action against debtor.

2. Nineteenth Street is a co-defendant in the State Court dram shop action along with Sabbah Brothers Enterprises, Inc. ("SBE") and Ibrahim Sabbah ("Sabbah").¹

3. Neither SBE nor Sabbah have filed for Bankruptcy Court protection, and neither has sought the protection of the automatic stay entered in the Bankruptcy Court.

4. On October 27, 2011, the Bankruptcy Court granted the Motion. The Order granted the Motion "with any recovery limited to being against this Bankruptcy Estate." See Order attached as Exhibit "B". Movant understood the Court's Order to restrict any attempt to

¹ Sabbah is the sole shareholder, officer, and director of both SBE and debtor Nineteenth Street.

collect a judgment against the debtor to the Bankruptcy Court's jurisdiction, but to allow collection from any non-debtor co-defendants in the State Court action.

5. Movant's State Court claims against SBE and Sabbah are "alter ego" or "pierce the corporate veil" claims. In essence, plaintiffs have alleged that Sabbah and SBE are equally responsible for the torts of the debtor. The State trial court had previously determined that it would try the underlying tort issues against defendant/debtor Nineteenth Street, and - - after entry of any judgment - - determine in a separate non-jury proceeding whether the alter ego co-defendants would also be liable.²

6. In February 2013, the State Court jury returned a verdict totaling \$7 million on behalf of Movant and against defendant Nineteenth Street. On information and belief, the co-defendants have assets and/or liquor liability insurance coverage which may partially satisfy the judgment.

7. Thereafter, the State trial court scheduled a non-jury proceeding with respect to the equitable "alter ego" claims against SBE and Sabbah. Said hearing was scheduled to begin May 29, 2013.

8. On or about April 8, 2013, debtor filed a "Motion to Dismiss" the State Court action. As part of that motion, the debtor alleges that any alter ego claims are property of the estate and that pursuit of any such claims against the co-defendants must be prosecuted under the jurisdiction of Bankruptcy Court.

² This Court was advised of the State Court's anticipated procedure in Movant's initial Motion for Relief from Automatic Stay. See Exhibit A, ¶4.

9. The State trial court has stayed the action pending a ruling or instruction from the Bankruptcy Court as to whether the alter ego claims are, in fact, an asset of the estate or whether they may be pursued independently in the State Court. See Order attached as Exhibit "C".

WHEREFORE, Premises Considered, Movant seeks clarification and instruction from the Bankruptcy Court as to:

- (a) The extent to which Movant may prosecute claims against SBE and Sabbah outside of the Bankruptcy Court;
- (b) Whether the alter ego claims are considered to be an asset of the bankrupt estate of the debtor The Nineteenth Street Investments, Inc.;
- (c) Whether alter ego claims against SBE and Sabbah must be pursued within the jurisdiction of the Bankruptcy Court; or
- (d) Whether alter ego claims against SBE and Sabbah may be pursued in the State Court action.



Patrick M. Lavette
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Attorney for Movant
Sharon Robertson

OF COUNSEL:

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Post Office Box 360186
Birmingham, AL 35236
Phone: (205) 988-4038
Fax: (205) 988-3490

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd date of May, 2013, I have served a copy of the above and foregoing on counsel for all parties by:

X Placing a copy of same in the United States Mail, properly addressed and first class postage prepaid to:

Kori Clement, Esq.
HARE, CLEMENT & DUCK, P.C.
505 20th Street North
1010 Financial Center
Birmingham, AL 35203


Don McKenna, Esq.
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Ralph Bohanan, Jr., Esq.
BOHANAN & ASSOCIATES, P.C.
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Birmingham, AL 35243

Edward D. Tumlin, Esq.
P.O. Box 36683
Birmingham, AL 35236

The Nineteenth Street Investments, Inc.
c/o Andrew N. Laplante, Esq.
1604 3rd Avenue North
Bessemer, AL 35020

Andre' M. Toffel, Esq.
ANDRE' M. TOFFEL, PC
1929 3rd Avenue North, Suite 4
4th Floor Farley Building
Birmingham, AL 35203



OF COUNSEL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:

THE NINETEENTH STREET
INVESTMENTS, INC.

DEBTOR

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)
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)

CASE NO.: 11-04549-TBB7
Chapter: 7

MOTION FOR RELIEF FROM AUTOMATIC STAY

Comes now creditor Sharon Robertson, individually and as personal representative of the Estate of Timothy Andrew Robertson and files this Motion for Relief from Automatic Stay in the above-entitled Chapter 7 proceeding. As grounds, movant shows as follows:

1. Debtor, The Nineteenth Street Investments, Inc., is a Defendant in three pending state court wrongful death and personal injury actions. Movant Sharon Robertson is the named Plaintiff in one such proceeding. The cases are "Dram Shop" cases arising out of wrongful death and personal injuries suffered in a motor vehicle accident that occurred following the debtor's alleged illegal sale of alcoholic beverages to an under-age driver. Robertson's thirteen year old son was killed in the accident. Two other minors were injured. The cases are:

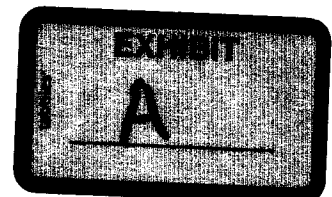
Sharon Robertson, individually and as personal representative of the Estate of Timothy Andrew Robertson v. Brittany Caffee, et al.

In the Circuit Court of Jefferson County, Bessemer Division, Alabama
CV-2007-000633-ERV

Susan Green, et al. v. Brittany Caffee, et al.

In the Circuit Court of Jefferson County, Bessemer Division, Alabama
CV-2007-000783-ERV

1



Tisha Owens and Bobby Waldrop, as parents and next friend of Michael Waldrop, a minor v. Brittany Caffee, et al.

In the Circuit Court of Jefferson County, Bessemer Division, Alabama
CV-2007-000797

The facts and circumstances of Movant's case are set out in the Fact Summary attached as Exhibit A.

2. The cases have been pending since 2007 and were consolidated for discovery and trial. The trial of the actions was scheduled to begin September 19, 2011, before the Honorable Eugene Verin. The Petition herein was filed on September 9, 2011.

3. Co-defendants in the pending state court cases are: The Nineteenth Street Investments, Inc. (debtor); Ibrahim Sabbah (identified in the bankruptcy petition hereunder as the sole shareholder, officer and director of debtor); and Sabbah Brothers Enterprises, Inc. (Ibrahim Sabbah is also the sole shareholder, officer and director of Sabbah Brothers Enterprises, Inc.).

4. Plaintiffs have alleged in the state court action that Ibrahim Sabbah and Sabbah Brothers Enterprises, Inc. are alter-egos of debtor, The Nineteenth Street Investments, Inc. and are equally responsible for the torts of debtor. The State trial court determined, in its Order of March 24, 2011, that it would try the underlying tort issues against Defendant, The Nineteenth Street Investments, Inc., and, after entry of any judgment, determine whether the alter-ego co-defendants are also liable.

5. Debtor has maintained that it has no insurance coverage for any liquor liability claims made by the Plaintiffs in the underlying action. Upon information and belief, however, a Nationwide liquor liability policy was issued to Co-Defendant Sabbah Brothers Enterprises, Inc., insuring the premises operated by debtor.

6. Debtor lists as assets a contingent claim described as "Right to sue insurance agent for messing up the name on the insurance liability policy." (See line item 21, Schedule B

of the Petition filed herein). Debtor also lists "other business insurance policies" as an asset (See line 35, Schedule B). It is presumed that this refers to potential claims under the Nationwide liquor liability policy insuring Sabbah Brothers Enterprises, Inc.

7. Plaintiff believes that potential breach of contract and/or bad faith claims against Nationwide might be additional assets for debtor.

8. The value of the claims in the underlying state court law suits cannot be determined until a judgment is rendered.

9. The state circuit court has been involved in litigation of this action since 2007. That Court is most familiar with the issues and the parties involved, and is the forum best suited to resolve the disputes. Since this Bankruptcy Court has no jurisdiction to try wrongful death or personal injury claims, the state circuit court is the best forum for resolution of these issues.

Wherefore, premises considered, Plaintiff prays that this Court provide relief from the automatic stay entered hereunder and allow the trial to go forward for the purpose of fixing the debtor's contingent liabilities in these underlying cases.

Respectfully Submitted,



Patrick M. Lavette (LAV001)
Attorney for Plaintiff, SHARON
ROBERTSON

OF COUNSEL:
DAVENPORT, LAVETTE & CLECKLER, P.C.
Post Office Box 360186
Birmingham, AL 35236
(205) 988-4038 (Telephone)
(205) 988-3490 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of September 2011, I have served a copy of the above and foregoing on counsel for all parties by:

XXX Placing a copy of same in the United States Mail, properly addressed and first class postage prepaid to:

Kori Clement, Esq.
HARE, CLEMENT & DUCK, P.C.
505 20th Street North
1010 Financial Center Birmingham, AL 35203


Don McKenna, Esq.
HARE, WYNN, NEWELL & NEWTON
The Massey Building
2025 3rd Avenue North
Birmingham, Alabama 35203

Ralph Bohanan, Jr., Esq.
Bohanan & Associates, P.C.
One Perimeter Park South, Suite 315S
Birmingham, AL 35243

Edward D. Tumlin, Esq.
P.O. Box 36683
Birmingham, Alabama 35236

The Nineteenth Street Investments, Inc.
c/o Andrew N. Laplante, Esq.
1604 3rd Avenue North
Bessemer, AL 35020

Andre' M. Toffel, Esq.
Andre' M. Toffel, PC
1929 3rd Avenue North, Suite 4
4th Floor Farley Building
Birmingham, AL 35203



OF COUNSEL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:)
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THE NINETEENTH STREET)
INVESTMENTS, INC.) CASE NO.: 11-04549-TBB7
) Chapter: 7
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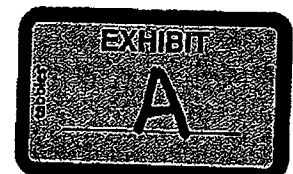
**FACT SUMMARY FOR MOTION FOR RELIEF FROM AUTOMATIC STAY
TO FORECLOSURE SECURITY AND LEASHOLD INTERESTS
IN CHAPTER 7 AND CHAPTER 13 CASES**

Date and Type of Claim: Wrongful death and dram shop claims on behalf of Sharon Robertson, individually, and as personal representative of Timothy Andrew Robertson, deceased, arising out of May 2, 2007, automobile accident pending in Sharon Robertson, individually and as mother of Timothy Andrew Robertson; and as Administratrix of the Estate of Timothy Andrew Robertson, a deceased child, v. Brittany Caffee, et al., Civil Action No.: CV-07-000633, Circuit Court of Jefferson County/Bessemer Division, Alabama. Case filed pre-petition on May 11, 2007.

Liability Insurance: None. A co-defendant in the State Court action, Sabbah Brothers Enterprises, Inc., has a policy with Nationwide. It is believed that The Nineteenth Street Investments, Inc. may have a claim for coverage under this policy, as well as potential errors and omissions claims against Nationwide's agent.

State Court Trial
Counsel for The
Nineteenth Street
Investments, Inc.:

Kori Clement, Esq.
HARE, CLEMENT & DUCK, P.C.
505 20th Street North
1010 Financial Center
Birmingham, AL 35203



Value of Personal
Injury Claim:
Prior Stay Order(s)
Involving Movant:

The claim is an un-liquidated wrongful death claim.

There are no prior stay orders involving Movant in this or any other case.

Date: 9/10/2011

Submitted by: 

Patrick M. Lavette
patlavette@dlclawyers.com
Attorney for Movant
Sharon Robertson

Davenport, Lavette & Cleckler, P.C.
Post Office Box 360186
Birmingham, AL 35236
Phone: (205) 988-4038
Fax: (205) 988-3490

EXHIBIT "2"

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA - SOUTHERN DIVISION**

In the Matter of:

The Nineteenth Street Investments, Inc }

Case No: 11-04549-TBB7

DEBTOR(S). }

ORDER GRANTING

This matter came before the Court on Tuesday, October 11, 2011 10:00 AM, for a hearing on the following:

RE: Doc #15; Final Hearing on Motion for Relief from Stay filed by Sharon Robertson

Proper notice of the hearing was given and appearances were made by the following:

Andre' M Toffel (Trustee)

Andrew N Laplante, attorney for Debtor

Patrick M. Lavette, attorney for Sharon Robertson

It is therefore ORDERED ADJUDGED and DECREED that:

Based on arguments of counsel, the pleadings, the evidence before the Court, and the findings of fact and conclusions of law set forth on the record and incorporated herein by reference, the motion for relief from stay filed by Sharon Robertson is GRANTED, with any recovery limited to being against this Bankruptcy Estate.

Dated: 10/27/2011

/s/ THOMAS BENNETT

THOMAS BENNETT

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA - SOUTHERN DIVISION**

In the Matter of:

The Nineteenth Street Investments, Inc }

Case No: 11-04549-TBB7

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Patrick M. Lavette, attorney for Sharon Robertson

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Dated: 10/27/2011

/s/ THOMAS BENNETT

THOMAS BENNETT

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA - SOUTHERN DIVISION**

In the Matter of:

The Nineteenth Street Investments, Inc }

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DEBTOR(S). }

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Dated: 10/27/2011

/s/ THOMAS BENNETT

THOMAS BENNETT

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA - SOUTHERN DIVISION**

In the Matter of:

The Nineteenth Street Investments, Inc }

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Patrick M. Lavette, attorney for Sharon Robertson

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Dated: 10/27/2011

/s/ THOMAS BENNETT

THOMAS BENNETT

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA - SOUTHERN DIVISION**

In the Matter of:

The Nineteenth Street Investments, Inc }

Case No: 11-04549-TBB7

DEBTOR(S). }

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Patrick M. Lavette, attorney for Sharon Robertson

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Dated: 10/27/2011

/s/ THOMAS BENNETT

THOMAS BENNETT

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA - SOUTHERN DIVISION**

In the Matter of:

The Nineteenth Street Investments, Inc }

Case No: 11-04549-TBB7

DEBTOR(S). }

ORDER GRANTING

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Patrick M. Lavette, attorney for Sharon Robertson

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Based on arguments of counsel, the pleadings, the evidence before the Court, and the findings of fact and conclusions of law set forth on the record and incorporated herein by reference, the motion for relief from stay filed by Sharon Robertson is GRANTED, with any recovery limited to being against this Bankruptcy Estate.

Dated: 10/27/2011

/s/ THOMAS BENNETT

THOMAS BENNETT

United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA - SOUTHERN DIVISION**

In the Matter of:

The Nineteenth Street Investments, Inc }

Case No: 11-04549-TBB7

DEBTOR(S). }

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ORDER GRANTING

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Andre' M Toffel (Trustee)

Andrew N Laplante, attorney for Debtor

Patrick M. Lavette, attorney for Sharon Robertson

It is therefore ORDERED ADJUDGED and DECREED that:

Based on arguments of counsel, the pleadings, the evidence before the Court, and the findings of fact and conclusions of law set forth on the record and incorporated herein by reference, the motion for relief from stay filed by Sharon Robertson is GRANTED, with any recovery limited to being against this Bankruptcy Estate.

Dated: 10/27/2011

/s/ THOMAS BENNETT

THOMAS BENNETT

United States Bankruptcy Judge

EXHIBIT "3"

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA - SOUTHERN DIVISION

In the Matter of:

The Nineteenth Street Investments, Inc } Case No: 11-04549-TBB7
}
DEBTOR(S). }
}
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ORDER GRANTING

This matter came before the Court on Tuesday, October 11, 2011 10:00 AM, for a hearing on the following:

RE: Doc #15; Final Hearing on Motion for Relief from Stay filed by Sharon Robertson

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Andre' M Toffel (Trustee)

Andrew N Laplante, attorney for Debtor

Patrick M. Lavette, attorney for Sharon Robertson

It is therefore ORDERED ADJUDGED and DECREED that:

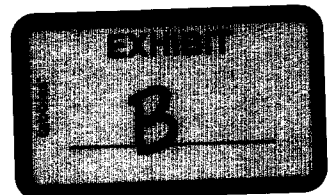
Based on arguments of counsel, the pleadings, the evidence before the Court, and the findings of fact and conclusions of law set forth on the record and incorporated herein by reference, the motion for relief from stay filed by Sharon Robertson is GRANTED, with any recovery limited to being against this Bankruptcy Estate.

Dated: 10/27/2011

/s/ THOMAS BENNETT

THOMAS BENNETT

United States Bankruptcy Judge





**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BESSEMER DIVISION**

ROBERTSON SHARON, AS MOTHER)
OF TIMOTHY ANDREW,)
Plaintiff,)

V.)

) Case No.: CV-2007-000633.00

)
CAFFEE BRITTANY,)
GARNER KATHLEEN,)
CUSHION AMANDA,)
THE NINETEENTH STREET)
INVESTMENTS, INC. ET AL,)
Defendants.)

ORDER SETTING 3 P.M. JUNE 11, 2013 STATUS CONFERENCE

Both this morning's 11 a.m. hearing and the May 29/30, 2013 trial setting are cancelled and this matter is set for status conference as indicated above, as the Court grants the relief requested by Sharon Robertson and stays this cause until clarification from the Bankruptcy Court is obtained.

DONE this 19th day of April, 2013.

/s/ HON. EUGENE R. VERIN
CIRCUIT JUDGE

